IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705	)	**Case No. 18-mc-00175-BAH**
	)	**GJ No. 18-2**
	)	
	)	**UNDER SEAL**

[redacted] **OPPOSITION TO UNITED STATES' MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED VIA *BANK OF NOVA SCOTIA* SUBPOENAS**

Dated: January 7, 2019

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[redacted] by and through its attorneys, LeClairRyan, PLLC, hereby submits this opposition to the United States' Motion to Compel Production of Documents Requested Via *Bank of Nova Scotia* Subpoenas (the "Motion") filed under seal on November 29, 2018 in the United States District Court of the District of Columbia (the "Court").

[redacted] respectfully requests that the Court deny the Motion because: (1) [redacted] is not subject to the personal jurisdiction of this Court relating to the investigation in question, and (2) even if personal jurisdiction over [redacted] can be established, [redacted] compliance with the Subpoena would violate Chinese law and, pursuant to the law of this jurisdiction, principles of international comity compel this Court to refrain from ordering [redacted] to so violate foreign laws on foreign territory.

I. Factual Background

[redacted] branch only maintains records of bank accounts serviced at the [redacted] branch itself, and it does not have access to the computer systems or information related to accounts maintained by other offices or branches of [redacted].

On or about December 27, 2017, [redacted] received a grand jury subpoena seeking "[a]ll records held abroad, including in Hong Kong and the People's Republic of China" for Mingzheng International Trading Limited ("Mingzheng")[1] and an allegedly related account that the Government claims Mingzheng used to make unlawful transfers of money.[2] *See* Grand Jury Subpoena No. GJ2017122744332 (the "Subpoena"), attached hereto as Exhibit 1. According to the Motion, Mingzheng, FTB, and two individuals, Sun Wei and Kim Tong Chol, are subjects of a grand jury investigation of possible violations of the federal money laundering statute, 18 U.S.C. § 1956; the International Economic Emergency Powers Act, 50 U.S.C. § 1705; and the Bank Secrecy Act, 31 U.S.C. § 5318A. Motion at 4-5. The Government alleges that Mingzheng hid its connection to FTB, which caused certain banks, including [redacted], to process transactions through branches located in the United States once they passed the security clearance of OFAC. Motion at 13-14. The Subpoena seeks "[a]ll records held abroad" for the time period from January 1, 2012 through December 26, 2017, including, but not limited to, the following:

(a) signature cards;

(b) documentation of account opening;

(c) account ledger cards;

(d) account statements;

(e) due diligence (including invoices); and

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[1] According to the Motion, on August 22, 2017, the Office of Foreign Assets Control ("OFAC") designated Mingzheng "for providing financial services to United Nations (U.N.)- and U.S.-designated [North Korean state-run Foreign Trade Bank ("FTB")] by, among other things, conducting U.S. dollar denominated transactions on behalf of FTB." Motion at 1-2.

[2] The Government attributes an incorrect account number to [redacted] in the Motion. It appears the Government may have accidentally referred to an alleged account number for Mingzheng at [redacted] *Compare* Motion at 2-3 *with* Subpoena at Attachment, p 1.

(f) records (copied front and back) of all items deposited, withdrawn or transferred.

See Subpoena at Attachment, p. 1.

None of the information or records sought by the Subpoena is located in the United States or its territories. All such records are located in China and, as previously noted, cannot be accessed at or by [redacted] Therefore, any production of the requested documents must be provided directly by [redacted] in China, whose actions would be governed by Chinese law.

[redacted] has attempted to negotiate with the Government in good faith since being served with the Subpoena. For example, in February 2018, prior counsel for [redacted] sent a letter to prosecutors in response to the Subpoena and offered to help prepare a discovery request pursuant to the procedures outlined in an existing mutual legal assistance treaty between the United States and China, which was signed in 2000 to specifically address such matters. *See* Agreement Between the Government of the United States of America and the Government of the People's Republic of China on Mutual Legal Assistance in Criminal Matters (the "MLAA"), attached to the Declaration of Guan Feng[3] ("Feng Decl.") as Exhibit B-25). Undersigned counsel for [redacted] subsequently made that same offer in conversations with the Government. However, instead of accepting the offer, on November 29, 2018, eleven months after issuing the Subpoena and nine months after first receiving [redacted] written offer to jointly proceed

[3] Mr. Feng is an attorney licensed to practice law in China and New York and currently a partner at King & Wood Mallesons L.L.P. Feng Decl. at ¶¶ 1, 3. He has extensive experience in complex, large-scale financial disputes and compliance matters, including banking, asset management, and futures disputes, and regularly represents large Chinese and international banks and financial institutions. *Id.* at ¶ 3. His Declaration in support of this motion is attached hereto as Exhibit 2.

through the MLAA, the Government moved to compel [redacted] compliance with the Subpoena.[4]

II. Argument

The Court should deny the Motion for two reasons: first, this Court lacks personal jurisdiction over [redacted] in the instant investigation; and second, principles of international comity dictate that this Court should refrain from ordering [redacted], a Chinese entity, from violating multiple Chinese laws by producing the requested documents outside of the MLAA process.

A. This Court Should Deny the Motion Because It Lacks Personal Jurisdiction Over [redacted].[5]

To determine whether the Court may exercise specific personal jurisdiction over non-resident parties, it must engage in a two-part inquiry: (1) whether personal jurisdiction may be exercised under the District of Columbia's long-arm statute, and (2) whether the exercise of personal jurisdiction would satisfy the requirements of due process. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F. Supp. 2d 240, 266-67 (D.D.C. 2011). In cases involving the enforcement of a grand jury subpoena, courts need not look to a state's long-arm statute when

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[4] The Motion also seeks to compel [redacted] compliance with a similar subpoena, seeking substantially the same kind of information as that requested from [redacted].

[5] "There are two types of personal jurisdiction: 'general or all-purpose jurisdiction, and specific or case-linked jurisdiction.'" *Trudel v. SunTrust Bank*, 302 F. Supp. 3d 140, 143 (D.D.C. 2018) (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Specific jurisdiction exists when "the suit arises out of or relates to the defendant's contacts with the forum" while general jurisdiction exists when the defendant's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Daimler AG v. Bauman*, 571 U.S. 117, 126-27 (2014) (citation omitted) (internal quotation marks omitted). The Government's Motion only alleges specific jurisdiction over [redacted], so the Court need not consider general jurisdiction. *See* Motion at 9-10, n.7.

the subject of a grand jury's investigation is the possible violation of federal statutes. *See Matter of Marc Rich & Co., A.G.*, 707 F.2d 663, 667 (2d Cir. 1983).

Under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), federal courts may exercise personal jurisdiction over a foreign defendant if the defendant has "certain minimum contacts with the [forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'" to comport with due process. *Goodyear*, 564 U.S. at 923 (quoting *Int'l Shoe*, 326 U.S. at 316) (original alterations omitted); *see also Lans*, 786 F. Supp. 2d at 267. "These minimum contacts must arise from 'some act by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum . . . thus invoking the benefits and protections of its laws.' The defendant must have 'purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arose out of or relate to those activities.'" *Lans*, 786 F. Supp. 2d at 267 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 475 (1985)).

The Supreme Court has not addressed specific personal jurisdiction over nonparties such as [redacted], but the D.C. Circuit has stated that a federal court may have personal jurisdiction over a nonparty foreign corporation or business using the two-pronged analysis in *International Shoe*. *See In re Sealed Case*, 832 F.2d 1268, 1273-74 (D.C. Cir. 1987), *abrogated on other grounds by Braswell v. United States*, 487 U.S. 99 (1988). The Government bears the burden of showing there is personal jurisdiction. *Id.* at 1274. Specifically regarding enforcement of grand jury subpoenas, the Government must show "'there is a reasonable probability that ultimately it will succeed in establishing the facts necessary for the exercise of jurisdiction.'" *Id.* (quoting *Marc Rich*, 707 F.2d at 670).

1. This Court Cannot Exercise Personal Jurisdiction Over [redacted] Due to Lack of Minimum Contacts.

Although [redacted] has availed itself of the U.S. banking system to process certain transactions by establishing branches in [redacted], the discovery sought in the Subpoena is not limited to those transactions, and therefore is far more expansive than necessary, or permissible. *See Leibovitch v. Islamic Republic of Iran*, 188 F. Supp. 3d 734, 751 (N.D. Ill. 2016), *aff'd* 852 F.3d 687 (7th Cir. 2017) (holding that subpoena seeking detailed information about account-holder's transactions anywhere in the world from foreign bank was insufficient to support the exercise of specific jurisdiction due to breadth of request). In seeking "*all records held abroad*" related to Mingzheng and its [redacted] account, the Government's request reaches well beyond information related to whatever contacts [redacted], a Chinese entity, had with the United States related to the alleged violations of U.S. law. *See id.* Under similar circumstances, the *Leibovitch* court found that the plaintiffs had failed to establish that the discovery dispute arose out of foreign banks' forum-related activities, even looking at their activities within the United States as a whole. *Leibovitch*, 188 F. Supp. 3d at 751-52. The Court should likewise find that the Government has failed to carry its burden to show that [redacted] had sufficient minimum contacts to fall within this Court's personal jurisdiction.

2. This Court Cannot Exercise Personal Jurisdiction Over [redacted] Even If There Were Minimum Contacts with the United States Because Such Exercise Fails to Comport with Traditional Notions of Fair Play and Substantial Justice.

Even if the Court finds there are sufficient minimum contacts, it cannot exercise personal jurisdiction over [redacted] as doing so would violate "traditional notions of fair play and substantial justice" under Supreme Court jurisprudence. *See Goodyear*, 564 U.S. at 923; *Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 105 (1987); *Int'l Shoe*, 326 U.S. at 316. "[G]reat care must be exercised when considering personal jurisdiction in the

international context" when the interests of foreign nations and their "procedural and substantive policies . . . are affected" by a U.S. court's assertion of jurisdiction. *Asahi*, 480 U.S. at 115. As such, a court should always conduct "a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case." *Id.* Specifically, the Court must consider (1) the burden on the foreign party, (2) the interests of the forum, (3) the plaintiff's interest in obtaining relief, (4) interests of efficiency, and (5) the shared interest of the respective forums, here China and the United States, in furthering substantive social policies. *Id.* at 113-15.[6] Of these factors, the burden on the party being forced to litigate in a foreign forum is of primary concern as the "unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi*, 480 U.S. at 114; *see also Labtest Int'l, Inc. v. Ctr. Testing Int'l Corp.*, 766 F. Supp. 2d 854, 864 (N.D. Ill. 2011).

Turning to the first factor, [redacted] will be heavily burdened by being forced to produce documents stored abroad in response to the Subpoena. In *Leibovitch*, the Seventh Circuit affirmed the Illinois District Court's ruling that there was no personal jurisdiction over Japanese and French banks to compel their compliance with a subpoena because "far-reaching discovery sought by [p]laintiffs would impose a heavy burden on these foreign nonparty banks, both of which are headquartered thousands of miles from this [c]ourt [and] [t]he Chicago branches of these foreign banks have no responsive documents or information in their possession, nor do they have access to a centralized database to conduct a global search for responsive documents in their home countries or the many other countries in which they operate." *Leibovitch*, 188 F. Supp. 3d at 755, *aff'd* 852 F.3d 687. Such is the case here. [redacted] branch does

[6] As acknowledged by the Government, much of this analysis overlaps with the international comity analysis contained herein. *See* discussion *infra* Section II.B, pp. 11-21.

not possess any responsive documents or information it could produce to the Government, and it does not have access to a centralized database to conduct a search for the Government's requested documents. In other words, it is impossible for [redacted] branch to comply with the Subpoena. Any production of documents by [redacted], outside of the MLAA process, would inevitably violate a multitude of Chinese laws, which all strictly prohibit disclosure of confidential client information. *See infra* Section II.B.1., pp. 12-16; *see also* Feng Decl. at ¶¶ 8, 10-48. As further discussed *infra*, commercial banks that violate these laws face significant criminal, civil, and administrative penalties, which cannot be considered mere "nominal logistical difficulties" as the Government asserts. *See* Motion at 16. Therefore, the first factor weighs overwhelmingly in favor of [redacted], and the Court should not exercise personal jurisdiction over [redacted] as doing so to order compliance with the Subpoena would ultimately force [redacted] to suffer severe penalties under Chinese law.

Next, as to the interrelated second, third, and fifth factors—the interest of the forum, the plaintiff's interest in obtaining relief, and shared interest of the two forums in furthering substantive social policies, respectively—the Government argues that it has a great interest in enforcing U.S. criminal laws "to preserve national security . . . [which] trumps any punishment that a Chinese bank could suffer, but likely will not." *See* Motion at 16. Although the Government's national security interests are valid, [redacted] also has a compelling interest in abiding by Chinese law and furthering the policies of China's national banking and financial system. Ensuring client confidence in the banking and financial systems is of utmost importance, as confidentiality of client information is considered a "basic right for a depositor and a fundamental obligation of commercial banks" under Chinese bank secrecy and data privacy laws. *See* Feng Decl. at ¶ 10. [redacted] compliance with the Subpoena would not only

result in an individual bank being punished, but threaten the integrity of China's regulatory systems and the protections it promises to provide to its banking and financial systems under law. Therefore, any such compliance would have far-reaching negative effects, which the Court must consider.

Lastly, under the fourth factor regarding interests of efficiency, the Government asserts that "the most, and likely only, efficient resolution of the request can be via subpoena, due to the significant likelihood that production via any mutual legal assistance request will be severely delayed, unanswered, or incomplete." Motion at 16. However, seeking the requested documents via subpoena can hardly be said to be the most efficient method when [redacted] has made multiple offers to cooperate with the Government through the MLAA, an agreement that the United States willingly entered into to address, among other things, the exact sort of discovery requests at issue here. *See* discussion *infra* Section II.C.4, pp. 23-26. Apparently, the Government believes the MLAA is an inefficient mechanism based on the unsupported contention that China has not provided similar records to the U.S. in the past 10 years. However, this is patently false. From 2015 to 2017, the Department of Justice and China's Ministry of Justice ("MOJ") cooperated in providing legal assistance to each other through the MLAA in sixteen cases, and in half of these cases, China shared information regarding financial accounts originating in China with the Government. Letter from Ministry of Justice ("MOJ Letter"), attached hereto as Exhibit 3, at 3-4. Additionally, the International Cooperation Department of the MOJ, the entity "in charge of international cooperation regarding the rule of law of the State," affirmed that "[t]he MOJ would timely review and handle the requests for assistance sought by the DOJ in accordance with the Agreement and applicable domestic laws." MOJ

Letter at 4. After receiving an appropriate request under the MLAA, "China will provide . . . assistance to the United States accordingly." *Id.*[7]

Furthermore, as recently as October 2017, investigatory cooperation between the U.S. Department of Justice and China's Ministry of Public Security led to the successful capture and extradition of an American national who had absconded to China, which demonstrates that US-China governmental cooperation in criminal judicial assistance has always remained viable and effective. *See* Feng Decl. at ¶ 89; Ex. B-28. The MLAA has also historically yielded successful results, including the indictment of Chinese bank managers and their wives for conducting a $485 million money laundering scheme and the indictment of one of the world's largest heroin suppliers.[8] Additionally, the Government cannot in good faith allege that the MLAA process is inefficient when it could have proceeded with discovery *nine months ago*, upon [redacted] offer to cooperate under the MLAA. At the very least, the Government could have attempted to reach a resolution through the legally accepted MLAA process. Thus, the Government's voluntary inaction is just as inefficient as any alleged inefficiency of the MLAA process. The fourth factor therefore also weighs in favor of [redacted]

The above analysis of the five *Asahi* factors demonstrates that the principles of fundamental fairness dictate that personal jurisdiction is lacking in this case.

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[7] Additionally, the Government's argument regarding the futility of using the MLAA fails because it is premature. *See Tiffany (NJ) LLC v. Qi Andrew*, 276 F.R.D. 143, 160-61 (S.D.N.Y. 2011), *aff'd sub nom. Tiffany (NJ) LLC v. Andrew*, No. 10 CIV. 9471 WHP, 2011 WL 11562419 (S.D.N.Y. Nov. 14, 2011) (directing plaintiffs to seek information through other means before moving to enforce subpoenas).

[8] *See* Press Release, Dep't of Justice, *Former Bank of China Managers and Their Wives Indicted For Stealing More Than $485 Million, Laundering Money Through Las Vegas Casinos* (Sept. 2, 2008), https://www.justice.gov/archive/opa/pr/2008/September/08-crm-764.html); Susan Saulny, *China's Help Is Credited in Tripping Up Drug Ring*, N.Y. TIMES (May 17, 2003), https://www.nytimes.com/2003/05/17/nyregion/china-s-help-is-credited-in-tripping-up-drug-ring.html.

B. Even If [redacted] Were Subject to This Court's Personal Jurisdiction, The Court Should Deny the Motion Because Principles of International Comity Dictate That This Court Should Refrain from Ordering [redacted] to Violate Chinese Law.

"[E]ven where personal jurisdiction over a foreign non-domiciliary is established, a court should not uphold an international subpoena in possible contravention of foreign law, without first performing a comity analysis." *Nike, Inc. v. Wu*, No. 13cv08012 (CM) (DF), 2018 WL 4907596, at *14 (S.D.N.Y. Sept. 25, 2018). The Supreme Court has directed American courts to "demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for sovereign interest expressed by a foreign state." *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 546 (1987). The doctrine of international comity "refers to the spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states." Id. at 543 n.27. This doctrine is "clearly concerned with maintaining amicable working relationships between nations, a shorthand for good neighbourliness, common courtesy and mutual respect between those who labour in adjoining judicial vineyards." *Mujica v. AirScan Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (citing *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C. V.*, 412 F.3d 418, 423 (2d Cir. 2005) (internal quotations omitted).

Courts must proceed with caution anytime they order discovery involving activity within another country and conduct a "'sensitive balancing of the competing interests at stake.'" *Leibovitch*, 188 F. Supp. 3d at 757 (citation omitted). A court will abstain from exercising jurisdiction in the interests of international comity only where there is a true conflict between domestic and foreign law. *United States v. All Assets Held at Bank Julius Baer & Co.*, 772 F. Supp. 2d 205, 210 (D.D.C. 2011). The "usual concerns that would trigger abstention in a

discovery dispute" arise when "documents sought are located abroad, or . . . producing them would cause [the subpoena recipient] to violate the laws of some foreign state." *Leibovitch v. Islamic Republic of Iran*, 297 F. Supp. 3d 816, 830 (N.D. Ill. 2018); *see, e.g.*, *Reinsurance Co. of Am. v. Adminstratia Asigurarilor de Stat*, 902 F.2d 1275, 1281-83 (7th Cir. 1990) (affirming district court order that declined to compel Romanian company to produce information that was protected by Romanian law under international comity principles); *Republic Techs. (NA), LLC v. BBK Tobacco & Foods, LLP*, No. 16 C 3401, 2017 WL 4287205, at *1 (N.D. Ill. Sept. 27, 2017) (observing that a "potential conflict with French law" triggered international comity analysis before compelling production of documents located in France). Certainly, as the D.C. Circuit has previously stated, it would cause the court "considerable discomfort to think that a court of law should order a violation of law, particularly on the territory of the sovereign whose law is in question." *In re Sealed Case*, 825 F.2d 494, 498 (D.C. Cir. 1987).

Based on these principles, the Court should deny the Motion because (1) complying with the Subpoena would require [redacted] to violate various Chinese laws, resulting in significant penalties, and (2) there is already an established legal procedure—a mutual legal assistance treaty with China—through which the Government can acquire the documents it seeks.

1. **[redacted] Compliance with the Subpoena Would Directly Contradict and Violate Multiple Chinese Laws, Resulting in Significant Penalties.**

As a [redacted] is subject to China's banking laws and regulation, data privacy and cybersecurity laws, criminal and judicial assistance laws, as well as administrative regulations. Specifically, if [redacted] were compelled to comply with the Subpoena, it would violate the following:

- Article 6 of the Law on Commercial Banks, under which all commercial banks must "protect the rights and interests of . . . depositors," which include

"confidentiality of depositors" *See* Feng Decl. at ¶ 10 & Ex. B-1; MOJ Letter at 3.

- Articles 1 and 4 of the Notice of the China Banking Regulatory Commission on Strengthening the Management of Client Information in Electronic Banking,[9] which forbids disclosure of client information without client consent. *Id.* at ¶ 18 & Ex. B-4.

- Article 24 of the Notice of the People's Republic of China on Issuing the Measures for the Administration of Renminbi Corporate Deposit, which orders commercial banks to maintain the secrecy of client information and grants them the right to refuse third-party inquiries. *Id.* at ¶ 19 & Ex. B-5.

- Article 29 of the Regulation on the Administration of Credit Investigation Industry, which requires written client consent before disclosing any client information. *Id.* at ¶ 35 & Ex. B-10.

- Articles 40 and 42 of the Cybersecurity Law, which strictly prohibit the disclosure of network data to third parties without client consent. *Id.* at ¶ 26 & Ex. B-7.

- Article 37 of the Cybersecurity Law, which limits any transfer of data overseas for business purposes, unless otherwise authorized by law.[10] *Id.* at ¶ 28 & Ex. B-7.

- Article 4 of the International Criminal Judicial Assistance Law of the People's Republic of China ("ICJA"), which prohibits Chinese entities from providing evidence and assistance to foreign governments without consent from the governing Chinese authority. *Id.* at ¶ 84 & Ex. B-27.

- Article 18 of the Criminal Procedure Law, which defers to use of the MLAA. *Id.* at ¶ 81 & Ex. B-12.

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[9] "Notices" are equivalent to regulations issued by the Office of the Comptroller of the Currency here in the United States. Therefore, the Notices referenced do not cite to other regulations or laws, as they are afforded such regulatory authority by themselves.

[10] According to Article 37 of the Cybersecurity Law, any overseas data transfer from [redacted] regarding client information is allowed if (1) it is for a business purpose, or (2) it is otherwise prescribed by other law or administrative regulation. *See* Feng Decl. at ¶ 28. Since providing information pursuant to a Subpoena does not qualify as a business purpose, the only way for [redacted] to not violate the Cybersecurity Law would be if other law allowed such data transfer. The MLAA is the legally authorized avenue to do so. Therefore, unless [redacted] produces the requested documents through the MLAA procedures, it will violate the Cybersecurity Law. *See id.* at ¶ 33.

Moreover, [redacted] compliance with the Subpoena would not only violate the above laws, but allow the Government to unjustly circumvent the MLAA, to which it voluntarily agreed would be used to obtain evidence in such matters. The governing authority for matters involving international criminal matters, the ICJA, specifically provides the following:

> Foreign institutions, organizations and individuals are prohibited from conducting any activities in relation to the criminal proceedings provided under this Law, and the institutions, organizations and individuals within the territory of [China] shall not provide evidence materials and assistance provided in this Law to foreign countries, without the consent of the competent authority of [China].

See Feng Decl. at Ex. B-27, ICJA, Art. 4; *see also id.* at ¶ 84.

> Article 13 of the ICJA further provides:
>
> When a foreign country requests the People's Republic of China to provide criminal judicial assistance, it shall file a written request in accordance with the provisions of the criminal judicial assistance treaty. If there is no treaty or it is not provided for in the treaty, it shall indicate the following matters in the written request and attach the relevant materials.

See id. at Ex. B-27, ICJA, Art. 13; *see also id.* at ¶ 87.

China's Criminal Procedure Law further defers to the MLAA: "[I]n accordance with the international treaties which [China] has concluded or acceded to or on the principle of reciprocity, the judicial authority of the PRC and that of other countries may request judicial assistance from each other in criminal affairs." *Id.* at Ex. B-12, Criminal Procedure Law, Art. 18; *see also id.* at ¶ 81. Therefore, the MLAA is the proper remedy for the Government to request the documents it seeks in the Subpoena. Otherwise, [redacted] would engage in illegal activity under Chinese law.

Contrary to the Government's statement that [redacted] cannot allege "a theoretical violation of unenforced Chinese laws," *see* Motion at 17, penalties for unauthorized disclosure of client information by Chinese commercial banks may be diverse and severe under Chinese law.

The MOJ, the entity in charge of "supervision and coordination of administrative law-enforcement, criminal penalty execution and public legal services," stated that [redacted] "**would** violate Chinese laws and [face] severe consequences if they were compelled to follow the . . . subpoenas." MOJ Letter at 2-3 (emphasis added). Violators may face criminal penalties including potential imprisonment and fines, *see* Feng Decl. at ¶¶ 70-76, civil exposure for breach of contract and tort, *see id.* at ¶¶ 59-69, and administrative penalties under the Law on Commercial Banks, regulations related to savings account administration and credit investigation, and the recently enacted Cybersecurity Law, *see id.* at ¶¶ 50-58. The Declaration of Guan Feng provides examples of bank branches that have faced administrative fines, *see id.* at ¶¶ 54-56 & Exs. B-15, B-16, & B-17, civil liability, *see id.* at ¶¶ 60-63, 65-69, & Exs. B-18, B-20, & B-21, and criminal penalties, *see id.* at ¶¶ 74-75 & Exs. B-23 & B-24.

For example, last month, the People's Bank of China ("PBOC") imposed a 400,000 RMB fine on a branch of Industrial Bank Co., Ltd. for failing to keep confidential client information. *See* Feng Decl. at ¶ 54 & Ex. B-15. In another recent case, Chinese courts held the Bank of China ("BOC") civilly liable to its depositors for breach of contract for freezing client accounts pursuant to a U.S. court order, in part because the BOC had violated confidentiality laws through its unauthorized disclosure of client information. *See* Feng Decl. at ¶¶ 61-63. And in 2017, the Wenling City Court in Zhejiang Province found the staff of a bank branch criminally liable for unlawfully disclosing client information, sentencing the staff to ten months incarceration and one year of probation. *See* Feng Decl. at ¶ 74 & Ex. B-23. The unauthorized disclosure of client information pursuant to a U.S. grand jury subpoena or court order, rather than through the legally authorized MLAA avenue, could subject [redacted] and its staff to similar penalties.

If ordered to produce the requested documents, [redacted] would violate the laws of its home country and be subject to serious penalties, which is the exact outcome comity principles seek to prevent.

2. *In re Sealed Case* Is the Controlling Law of This Jurisdiction and the Court Should Deny the Motion Given the Substantially Similar Facts.

In *In re Sealed Case*, 825 F.2d 494, 498 (D.C. Cir. 1987), the D.C. Circuit squarely addressed and ruled on the issues that arise here.[11] In that case, during the course of a grand jury investigation into an alleged money-laundering scheme, the U.S. government issued a subpoena to a foreign bank and the manager of one of the bank's branches in the United States seeking bank documents that were created and held in a foreign country, Country Y.[12] 825 F.2d at 495. Country Y had "banking secrecy laws that make it a criminal offense for a bank or a person to reveal to anyone other than the customer, information about banking transactions or bank documents created in Country Y that relate to the customer and his transactions." *Id.* Unwilling to violate the laws of Country Y and suffer the consequences, both the bank and the manager refused to comply with the subpoena, and the government filed motions to compel production of the requested documents, which the district court granted. *Id.* at 495-96. When the bank and manager still refused to produce the documents, the district court found both in civil contempt. *Id.* at 496.

On appeal, the D.C. Circuit, noting its "considerable discomfort to think that a court of law should order a violation of law, particularly on the territory of the sovereign whose law is in

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[11] This case is still prevailing law in this jurisdiction. *See In re Grand Jury Subpoena*, No. 18-3071, slip op. at 2 (D.C. Cir. Dec. 18, 2018) (citing *In re Sealed Case* when considering appellant's argument that subpoena was unreasonable and oppressive because it would require the corporation to violate a foreign country's law).

[12] The bank was owned by the government of Country X and did business in Country Y. 825 F.2d at 495.

question," reversed the contempt order, adding that even if the court had the power to issue such orders, on the facts of the case, the order should not have issued. *In re Sealed Case*, 825 F.2d at 498. Among those particular facts of the case were, "[m]ost important . . . the fact that these sanctions represent an attempt by an American court to compel a foreign person to violate the laws of a different foreign sovereign on that sovereign's own territory," that "the bank . . . [was] not itself the focus of the criminal investigation in this case but [was] a third party that [had] not been accused of any wrongdoing," that "the bank [was] not merely a private foreign entity, but . . . an entity owned by the government of Country X," that "[t]he district court specifically found that the bank had acted in good faith throughout these proceedings," and that "[t]he executive branch may be able to devise alternative means of addressing this problem, but the bank [could not]." *Id.* (internal citations omitted).

The same facts that the D.C. Circuit considered in its ruling against compelling a foreign bank to comply with a subpoena exist here. First, any court order granting the Motion would compel [redacted] a Chinese entity, to violate "the laws of [China] on [China's] own territory." Second, identical to the bank in *In re Sealed Case*, [redacted] is an innocent third party that is not the focus of the criminal investigation in question. Even the Government's Motion acknowledges that [redacted] was likely misled by Mingzheng and [redacted] covert actions. *See* Motion at 13 ("Mingzheng hid its connection to FTB, which caused banks to process transactions through the United States, after the banks checked their OFAC filters."). Third, similar to the bank in the case, [redacted] Moreover, while the bank in *In re Sealed Case* was owned by the

[redacted]

government of a third sovereign, Country X, the fact that [redacted] whose laws are implicated further weighs in favor of denying the Motion. Fourth, at all times during this grand jury investigation, [redacted] engaged in good faith conduct with the Government, even offering its cooperation in the preparation of discovery requests pursuant to the MLAA process. [redacted] refusal to comply with the Subpoena is entirely based on its desire to avoid violating the laws of its own country, not for any other reason. Lastly, here, the U.S. executive branch *has* devised an alternate way to obtain the requested documents—through the MLAA, which has been incorporated into Chinese law.

The D.C. Circuit also considered the potential harm that would be imposed on the bank manager if he complied with the subpoena request. The D.C. Circuit acknowledged the bank manager's fear of prosecution, but ultimately affirmed the contempt order entered against him because "[h]e could only be punished for [offending Country Y's laws] if he were to return there voluntarily." *Id.* at 497. This is not the case here. Unlike the bank manager, [redacted] does not have a choice whether to subject itself to Chinese law, as it is situated and headquartered in China.

3. The Government's Attempts to Distinguish *In re Sealed Case* in its Motion Are Without Merit.

The Government's attempts to distinguish *In re Sealed Case* are without merit. First, the Government's argument that Chinese bank secrecy laws are "not so robust as to preclude disclosure," is incorrect. As shown above and as further set forth in the Feng Declaration, Chinese banking laws are robust and compliance with the subpoena would open [redacted] to both civil and criminal liability, as well as administrative fines. *See supra* Section II.B.1, pp. 12-16.

[redacted]

Second, while the D.C. Circuit found it relevant that the grand jury had access to the manager's testimony, this was only relevant in the context that it was an "alternative means to obtain additional information," such as those the court considered may exist for the bank in that case. *See In re Sealed Case*, 825 F.2d at 499. Here, such alternative means would potentially include use of the MLAA to lawfully acquire the production the Government seeks. Third, the Government's statement that "the analysis would be different if the bank were more than mere custodians of records" is nowhere supported or mentioned in the case itself. Motion at 26.

Fourth and finally, the Government seems to imply that because *In re Sealed Case* did not apply or cite to the factors listed in a footnote in *Société Nationale*, the *In re Sealed Case* decision must somehow be invalid. *See* Motion at 27. However, as acknowledged by the Supreme Court in *Société Nationale* itself, the five factors do not represent a required analysis, but rather that these factors are "*suggested* by the Restatement of Foreign Relations Law of the United States." 482 U.S. at 544 n.28. Thus, this five-factor test is not binding on this Court.

Based on the nearly identical facts in *In re Sealed Case*, the Court should deny the Motion as compelling compliance with the Subpoena would not only force [redacted] to violate Chinese laws, but would run counter to the principles of international comity to which U.S. Courts, including this Circuit's, give great deference.[14]

4. D.C. Circuit Opinions Cited in the Motion Do Not Mandate Judicial Deference to the Executive Branch in Matters of Comity.

The Government cites to other opinions from this jurisdiction in support of its argument that the judiciary should defer to the executive's prosecutorial decisions when matters of

[14] The Government further argues that a foreign bank should not establish a branch in the United States or conduct U.S. dollar transactions if it does not wish to subject itself to enforcement of U.S. criminal laws. *See* Motion at 27. This argument has no merit. An entity's presence in the United States does not obviate the need for a comity analysis where compliance with a discovery request would violate foreign law. *Qi Andrew*, 276 F.R.D. at 159.

international comity are involved.[15] *See* Motion at 18-20. However, these cases are factually distinguishable. For example, in *Laker Airways*, the D.C. Circuit did not apply principles of international comity in recognizing a decision by a foreign government that prohibited the court from applying American laws to corporations doing business in the United States because doing so would mean that "United States judicial functions have been usurped, destroying the autonomy of the courts." 731 F.2d 909, 939. Here, [redacted] is asking the Court to give deference to Chinese law, which exists not to stymie United States judicial independence, but to support China's national banking system. *See* Feng Decl. at ¶ 10 (describing "the confidentiality of client information" as "a basic right for a depositor and a fundamental obligation of commercial banks").

The other cases fail to cite actual violations of foreign law. In *Baker Hughes*, the court rejected a foreign company's opposition to an antitrust injunction, which was supported by a note from the Embassy of Finland, but it was unclear if there was any basis in law for the embassy's comity argument. 731 F. Supp. 3, 6 n.5. In *One Gulfstream G-V Jet Aircraft*, the court generally held that a court could decline to exercise its jurisdiction whenever a case implicated international affairs, but the claimants had failed to cite to a single foreign law or proceeding to which the court should defer. 941 F. Supp. 2d 1, 10 (D.D.C. 2013). Lastly, in *Sum of $70,990,605*, the court declined to intervene on the basis of international comity because the claimants were unable to identify any conflict between U.S. law and Afghani law, rested their case on general assertions, and there was no evidence that Afghani law would be violated. 991 F. Supp. 2d 154, 169 (D.D.C. 2013). In contrast, [redacted] has identified specific Chinese laws

[15] See *United States v. Sum of $70,990,605*, 991 F. Supp. 2d 154, 169 (D.D.C. 2013); *United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp. 2d 1, 10 (D.D.C. 2013); *United States v. Baker Hughes Inc.*, 731 F. Supp. 3 (D.D.C. 1990); *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909 (D.C. Cir. 1984).

that it would be forced to violate if compelled to respond to the Subpoena, notwithstanding the availability of an alternative method to fulfill the Government's request, and thus, the Court should weigh the principles of international comity in [redacted] favor and deny the Motion.

C. Should the Court Conduct Any Further Analysis, the Factors Under the Restatement (Third) of Foreign Relations Law Weigh in Favor of Denial of the Motion.

In its Motion, the Government argues that the factors originally set forth in Restatement (Third) of Foreign Relations Law of the United States § 442(1)(c) (the "Restatement") support compulsion of the bank records. Although this test is not binding on this Court, to the extent the Court may choose to look to those factors for guidance, they still weigh in favor of denying the Motion. The Restatement sets forth five factors a court should consider in deciding whether to compel production of information located abroad: (1) "the importance to the investigation or litigation of the documents or other information requested;" (2) "the degree of specificity of the request;" (3) "whether the information originated in the United States;" (4) "the availability of alternative means of securing the information;" and (5) "the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where information is located." Restatement § 442(1)(c). Other jurisdictions have adopted this test, including the Second Circuit, which considers two additional factors: "(6) the hardship of compliance on the party . . . from whom discovery is sought; and (7) the good faith of the party resisting discovery." *Nike*, 2018 WL 4907596, at *14. To the extent that this Court may wish to apply a similar test here, consideration of these factors supports the entry of an order denying the Government's Motion.[16]

[16] While [redacted] lists the two additional factors as adopted by the Second Circuit, [redacted] argues that this case should be governed by the D.C. Circuit decision not the Second Circuit decisions. Although the Government cites extensively to *Gucci Am., Inc. v. Weixing Li*, 135 F.

1. Based on the Government's Conduct, the Records Requested Do Not Appear So Important or Critical to the Grand Jury's Investigation.

The Government claims that the records it seeks from [redacted] are the foundation of its investigation. Motion at 21. While [redacted] cannot speak directly to what documents the Government may think it does or does not need as part of its grand jury investigation, it must be noted that the Government waited nearly an entire year after issuance of the Subpoena to file its Motion. During that time, and as early as nine months ago, [redacted] explained its rationale for declining to comply with the Subpoena and offered to cooperate in drafting discovery requests under the MLAA. Presumably, if the documents were so crucial to the investigation, the Government would not have waited so long before seeking to compel production. Thus, the first factor weighs in favor of [redacted].

2. The Government's Request Lacks Sufficient Specificity.

The Government has not sufficiently tailored its requests for documents to [redacted] contacts with this forum. The Government argues that the requests in the Subpoena to [redacted] are sufficiently tailored because they seek "specific financial records," "do not seek voluminous records," and "are date limited," noting that, allegedly, "[t]housands of U.S. banks answer similar requests on a daily basis." Motion at 21. While the Subpoena may seek records related only to one entity and one account for a specific time period, it requests production of *all* records related to that entity and account. The request is not sufficiently tailored because it requires the

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Supp. 3d 87 (S.D.N.Y. 2015) and *Nike*, 2018 WL 4907596, their rulings compelling nonparty Chinese banks to comply with subpoena requests should not control as the facts are easily distinguishable. *See infra* n.16. The instant case is more akin to *Tiffany (NJ) LLC v. Qi Andrew*, 276 F.R.D. 143, 160 (S.D.N.Y. 2011), *aff'd sub nom. Tiffany (NJ) LLC v. Andrew*, No. 10 CIV. 9471 WHP, 2011 WL 11562419 (S.D.N.Y. Nov. 14, 2011), wherein the court ruled that nonparty Chinese banks could not be required to comply with subpoenas given the conflict between U.S. and Chinese banking laws and comity considerations, especially where an alternative means for obtaining documents was available.

production of documents unrelated to the alleged illicit U.S. dollar payments made by Mingzheng for the benefit of the North Korean government or other U.S. dollar-related transactions that the Government alleges form the basis for personal jurisdiction. Even assuming *arguendo* that there is specific personal jurisdiction, the Government cannot use that fact as a procedural shortcut to engage in a fishing expedition into [redacted] unrelated records and avoid employing the MLAA process. Therefore, the second factor also weighs in favor in [redacted]

3. The Requested Records Are Located Abroad.

The Government readily admits that the documents requested are located in China. Motion at 21. As discussed above, these documents are wholly inaccessible to [redacted] branch, the recipient of the subpoena. *See supra* Section I, p. 1. Producing these records would therefore require international coordination within [redacted] and would create significant hardship, notwithstanding the fact that doing so would violate Chinese law in the first instance. This third factor undeniably weighs in favor of [redacted] and while it is the strongest factor in [redacted] favor (as the Government concedes), it is certainly not the "sole factor," as the Government contends. Motion at 21.

4. The MLAA Provides An Effective, Alternative Method to Secure the Requested Records.

On June 19, 2000, the United States and China entered into the MLAA. The stated purpose of the MLAA is "to improve the effectiveness of cooperation between the [United States and China] in respect of mutual legal assistance in criminal matters." MLAA, p. 1. In the Motion, the Government claims that "production via [the MLAA] will be severely delayed, unanswered, or incomplete" based on the unsupported assertion that in the previous 10 years "previous MLAA requests for production of similar records to China remain unanswered." Motion at 16, 22. However, the facts indicate otherwise. According to the MOJ's statistics,

China has indeed provided with the Department of Justice with similar financial records in at least eight instances within the past four years. *See* MOJ Letter at 3-4. As recently as October 2017, the U.S. Department of Justice and China's Ministry of Public Security successfully worked together to arrest and extradite an American national who had absconded to China. *See* Feng Decl. at ¶ 89; Ex. B-28. Moreover, the MLAA has previously been hailed by the U.S. Government for being a highly successful investigation tool: in 2008, following the conviction of several former Bank of China managers and their relatives for money laundering in Nevada, the U.S. Department of Justice acknowledged that "the government of the People's Republic of China, in particular the Ministries of Justice and Public Security along with the Hong Kong Department of Justice and Hong Kong Police Force, also provided substantial assistance in producing evidence and making witnesses available, both for testimony at trial and videotaped depositions." Press Release, Dep't of Justice, *Former Bank of China Managers and Their Wives Indicted For Stealing More Than $485 Million, Laundering Money Through Las Vegas Casinos*, (Sept. 2, 2008), https://www.justice.gov/archive/opa/pr/2008/September/08-crm-764.html). In 2003, cooperation under the MLAA led to the capture of one of the world's largest heroin suppliers, Kin Cheung Wong, after an "unprecedented level of cooperation between American and Chinese law enforcement agencies." *See* Susan Saulny, *China's Help Is Credited in Tripping Up Drug Ring*, N.Y. TIMES (May 17, 2003), https://www.nytimes.com/2003/05/17/nyregion/china-s-help-is-credited-in-tripping-up-drug-ring.html. Indeed, the United States and China have successfully utilized the tools and procedures provided by the MLAA to aid in criminal investigations and proceedings.

It is uncontroverted that the Government could seek the same documents and records using the procedures outlined in the MLAA. The Government has simply chosen not to do so.

Not only is the MLAA a viable alternative for obtaining the requested records, but it is also the only channel to obtain them legally under Chinese law. Feng Decl. at ¶¶ 7, 30-31, 77-88. The Government's suggestion that the MLAA is not a viable alternative is simply incorrect.[17] Moreover, Article 22 of the MLAA requires that the United States and China cooperate to promote the most effective use of the MLAA, and if unable to resolve disputes related to the treaty, to do so through diplomatic channels. See Feng Decl. at Ex. B-25. If the Government is unsatisfied with the MLAA process, it should seek a diplomatic solution as negotiated in Article 22 instead of attempting to arbitrarily use its subpoena powers to circumvent the MLAA.

Even assuming *arguendo* that pursuing the records at issue via the mutual legal assistance process rather than a grand jury subpoena may have led to unwanted delays, the intervening time that could have been spent moving that process forward has now been wasted. *See Qi Andrew*, 276 F.R.D. at 156 (alternative method for information sought cannot be deemed futile even if the rate of executing requests is less than ideal for party seeking information, if foreign party does process requests). [redacted] offered *nine months ago* to cooperate with the Government in crafting an appropriate request through the MLAA, but the Government instead waited until now to file the Motion compelling compliance with a year-old subpoena. The Government should not be permitted to have it both ways—if time was truly of the essence, it should not have allowed

[17] Unlike Bank of China, which had "failed to put forward credible, non-speculative evidence that requests made through the Hague Convention represent a viable alternative method of obtaining discovery," leading the court to compel compliance by a non-party Chinese bank, here, the MOJ letter and the Feng Declaration provide credible support that the MLAA is indeed a viable alternative for the Government to obtain the requested documents. *See Gucci Am., Inc. v. Weixing Li*, 135 F. Supp. 3d 87, 101 (S.D.N.Y. 2015); *see also Nike*, No. 13 CIV. 8012 (CM), 2018 WL 6056259, at *14 (ordering nonparty Chinese bank to comply with subpoena because neither its expert declaration nor a form letter from the Ministry of Justice provided relevant information).

eleven months to pass between the issuance of the subpoena and its filing of this Motion to Compel.

And finally, the Government's claim that it needs a legal mechanism that allows for sanctions for noncompliance is misplaced. As repeatedly noted, and is uncontroverted, [redacted] offered *months ago* to cooperate through a mechanism that does not expose it to legal liability in China. It is unclear why a mechanism for sanctions is necessary when, as here, the recipient of the Subpoena has offered to cooperate. Based on the facts, this claim by the Government rings hollow. For reasons articulated here and above, the fourth factor is overpoweringly in favor in [redacted]

5. [redacted] Compliance with the Subpoena Would Undermine Important Chinese Interests Because It Would Result in Numerous Violations of Chinese Laws.

As to the fifth factor, the Government argues that the United States has a great interest in investigating potential financiers of state-sponsored terrorism. *See* Motion at 23-25. However, the relevant inquiry for this factor is "the extent to which noncompliance with the request would *undermine* important interests of the United States" versus how much "compliance with the request would *undermine* important interests of the state where information is located," not whether there *are* important interests on one side or the other. [redacted] noncompliance would only "undermine" such interests if there were no other way to obtain the documents sought by the Subpoena. As mentioned above, [redacted] has offered to work with the Government to pursue a mutually beneficial outcome through the MLAA process, which would lead to the same outcome as that which the Government seeks without exposing [redacted] to liability in China.

On the other hand, [redacted] forced compliance with the Subpoena would be in clear violation of various areas of Chinese law, including banking laws and regulations, cybersecurity

laws, administrative regulations, criminal and judicial assistance laws. Such an outcome would undoubtedly undermine the legitimate interests of a foreign sovereign. *See* MOJ Letter at 2. While the Government primarily cites to cases where its interest trumped that of other countries, those cases refer only to the foreign countries' bank secrecy laws. Even assuming *arguendo* that the Court does not find maintaining the foundational principle of confidentiality of client information persuasive enough to deny the Motion, [redacted] compliance with the Subpoena would violate other areas of Chinese law. Together, the balance of interests favors denying the Motion.

The Government argues that [redacted] faces minimal hardship by complying with the subpoena as part of its argument under this factor. Motion at 24. [redacted] suggests that under this analysis, hardship is better considered as its own separate factor, as done below. *See also Nike*, 2018 WL 4907596, at *14.

6. [redacted] Compliance with the Subpoena Would Result in Significant Penalties, Resulting in Hardship.

The Government contends that [redacted] "cannot simply allege a theoretical violation of unenforced Chinese laws." Motion at 17. It further asserts Chinese banks have previously failed to carry their burden because they "'point[ed] to no case where a Chinese bank was subjected to liability for disclosing the type of information sought' here." *Id.* This claim completely ignores the significant costs and penalties associated with violations of Chinese laws, which, in fact, have been imposed on other banks and will likely be assessed to [redacted] *See supra* Section II.B.1, pp. 12-16; *see also Qi Andrew*, 276 F.R.D. at 158 (hardship of compliance analysis only requires a showing that possibility of civil and/or criminal punishment for disclosure is not speculative, not certainty of punishment). In light of the potential penalties [redacted] faces if it complies with the subpoena, this factor weighs in favor of denying the Motion.

7. At All Times During This Investigation, [redacted] Acted in Good Faith.

Lastly, [redacted] has engaged in good faith conduct by maintaining communication with the Government since being served with the Subpoena. [redacted] has offered to jointly seek production through the MLAA and has only maintained that it is unable to produce records in an attempt to avoid violating the laws of its country. *See Qi Andrew*, 276 F.R.D. at 160. In light of its efforts to seek a mutually agreeable outcome, [redacted] has undeniably acted with good faith. The seventh factor weighs in favor of [redacted]

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Balancing the factors favors [redacted] and warrants denial of the Motion. The Government's delay indicates that these documents are not crucial to this investigation, the documents are located abroad, other methods of discovery are available through the MLAA, compliance with the Subpoena would undermine important Chinese interests, [redacted] will be forced to violate Chinese law in order to comply with the subpoena, [redacted] will likely suffer penalties for these violations, and [redacted] has acted with the utmost good faith in this process. Accordingly, the Court should deny the Government's Motion.

Conclusion

This Court must not order a violation of law, particularly on the territory of the sovereign whose law is in question. *See In re Sealed Case*, 825 F.2d at 497. This court lacks personal jurisdiction over [redacted] because of an absence of minimum contacts with the United States and because such assertion of jurisdiction would violate traditional notions of fair play and substantial justice. Even if the Court were to find, *arguendo*, that it could properly exercise personal jurisdiction over [redacted] the principles of international comity demand that this Court defer to Chinese law, as compelled compliance with the Subpoena would cause [redacted] to

violate a number of these provisions, placing [redacted] in an extremely difficult and compromised position. If the Court grants the Motion, [redacted] would be left to choose between violating a U.S. court order or complying with a foreign discovery request that violates multiple Chinese laws and regulations. In either case, the bank will be exposed to criminal and civil liability, as well as administrative fines and penalties. Compounding this injustice is the existence of the MLAA as an alternative method of seeking these documents, as the treaty and its mechanisms were established to specifically address situations like these. Indeed, [redacted] from the very beginning, has offered to cooperate with the Government in forming a mutual legal assistance request. For these reasons, this Court should deny the Government's Motion.

Dated: January 7, 2019

[redacted]

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2019, copies of the foregoing were served via electronic mail and via first class mail to Zia M. Faruqui, Assistant United States Attorney, c/o United States Attorney's Office, 555 4th Street NW, Room #4806, Washington, DC 20530, Zia.Faruqui@usdoj.gov.

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